

## Topic Paper #3-5

# THE IMPACTS THAT NAGPRA HAS ON ENERGY DEVELOPMENT

Prepared for the  
Permitting, Siting, and Community Engagement for  
Infrastructure Development Task Group

On December 12, 2019 the National Petroleum Council (NPC) in approving its report, *Dynamic Delivery – America's Evolving Oil and Natural Gas Transportation Infrastructure*, also approved the making available of certain materials used in the study process, including detailed, specific subject matter papers prepared or used by the study's Permitting, Siting, and Community Engagement for Infrastructure Development Task Group. These Topic Papers were working documents that were part of the analyses that led to development of the summary results presented in the report's Executive Summary and Chapters.

**These Topic Papers represent the views and conclusions of the authors. The National Petroleum Council has not endorsed or approved the statements and conclusions contained in these documents, but approved the publication of these materials as part of the study process.**

The NPC believes that these papers will be of interest to the readers of the report and will help them better understand the results. These materials are being made available in the interest of transparency.

The attached paper is one of 26 such working documents used in the study analyses. Appendix C of the final NPC report provides a complete list of the 26 Topic Papers. The full papers can be viewed and downloaded from the report section of the NPC website ([www.npc.org](http://www.npc.org)).

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# Topic Paper

(Prepared for the National Petroleum Council Study on Oil and Natural Gas Transportation Infrastructure)

<b>3-5</b>	<b>The Impacts that NAGPRA has on Energy Development</b>
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<b>Date:</b> September 12, 2019	<b>Revision:</b> Final
<b>SUMMARY</b> This paper provides background on the Native American Graves Protection and Repatriation Act (NAGPRA) and recommendations for improvement in government and Native American and Alaska Native tribal relations.	

On November 16<sup>th</sup>, 2020 the Native American Graves Protection and Repatriation Act will have reached its 30<sup>th</sup> anniversary. After almost thirty years, NAGPRA is still a major concern for tribal governments. Implementation and completion of repatriations under NAGPRA from federal agencies and museums that have possession of Native American human remains, associated funerary objects, sacred objects and objects of cultural patrimony continues to be an onerous and lengthy process.

Setting complicated federal permitting processes aside, ignoring the importance and history of NAGPRA in relation to federal permitting has been virtually overlooked by energy development companies. Ignoring this history between the agencies and tribes, often associated with energy projects, has inadvertently propagated a destructive dynamic between energy developers and their proposed projects.

In July of 2010, the Government Accountability Office published the report, “After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act.”<sup>1</sup> Now, with the 30<sup>th</sup> year anniversary of NAGPRA approaching, very little has been accomplished.

Since 2011, the Secretary of the Interior has required Federal agencies to submit data annually on completed repatriations. Each year, the Program sends a data request to each Federal agency that has published a Notice of Inventory Completion asking for the corresponding repatriation data.”

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<sup>1</sup> United States Government Accountability Office, Report to Congressional Requesters, GAO-10-768

**TABLE 4.—Repatriations reported by Federal agencies as of Sept 30, 2017 Federal Agency<sup>2</sup>**

	<b>Sets of Human Remains</b>	<b>Associated Funerary Objects</b>
Agriculture, Forest Service	2,321	21,849
Defense, Air Force	29	61
Defense, Army	118	3,358
Defense, Army Corps of Engineers	1,582	181,327
Defense, Marine Corps	1,599	739
Defense, National Guard Bureau	0	0
Defense, National Museum of Health & Medicine	14	0
Defense, Navy	277	6,802
Energy	7	1,341
Environmental Protection Agency	0	0
Homeland Security, U.S. Coast Guard	2	0
Interior, Bureau of Land Management	1,191	16,488
Interior, Bureau of Reclamation	564	3,379
Interior, Fish and Wildlife Service	65	372
Interior, Indian Affairs	1,868	20,383
Interior, Indian Arts and Crafts Board	1	0
Interior, National Park Service	4,751	75,654
International Boundary and Water Commission	0	0
Justice, FBI and Marshalls Service	2	1
Tennessee Valley Authority	58	2,564

## RECOMMENDATIONS

The DOE, Federal Agencies, and energy developers have a unique opportunity to develop and build strong relationships with tribes by assisting them with NAGPRA funding and repatriations. From the statistics above, it is no wonder that tribes continue to oppose projects that are permitted by federal agencies and developed by energy companies when there is a history of excavating large numbers of Native American human remains, funerary objects, sacred objects and objects of cultural patrimony linked directly with these agencies and these types of projects. Help could be provided in several ways: increased funding for education and training from tribal experts who have been successful in the repatriation process, increased funding levels for repatriations and NAGPRA consultations with agencies and museums (and associated travel costs), tribal community investment dollars from Industry dedicated for specific NAGPRA concerns and increased penalties for those museums and agencies that do not comply with NAGPRA.

<sup>2</sup> Table 4 source: <https://www.nps.gov/nagpra/DOCUMENTS/Reports/FY2017-National-NAGPRA-Program-Report.pdf>, at p. 6.